Dato' Seri Anwar bin Ibrahim v Perdana Menteri, Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S5–21–185 OF 1998
MOHD SAARI J
24 DECEMBER 1998

Constitutional Law — *Constitution — Federal Constitution — Revocation of appointment of plaintiff as Deputy Prime Minister and Minister of Finance — Whether revocation done in accordance with art 43(5) of Federal Constitution — Federal Constitution art 43(5)*

The plaintiff was, at the material time, the Deputy Prime Minister ('Deputy PM') and also Minister of Finance but was served with a letter from the Prime Minister ('PM') informing him that his appointment as Deputy PM and Minister of Finance was revoked with immediate effect. The plaintiff brought an action against the defendants on the ground that the revocation of appointment of the plaintiff as Deputy PM and Minister of Finance was not done in accordance with the requirement of art 43(5) of the Federal Constitution. The defendants then applied for, inter alia, the plaintiff's originating summons and affidavit in support be struck out on the ground that they did not disclose any reasonable cause of action, they were frivolous and vexatious and they were an abuse of the process of the court.

Counsel for the plaintiff argued that the letter of revocation sent to the plaintiff appeared as if the PM was dismissing the plaintiff, whereas the PM was not the alter ego of the King. However, counsel for the defendants submitted that with the conveying of the PM's decision to the King coupled with the letter of revocation sent to the plaintiff, the act of revocation was completed, and the procedure adopted met the requirement of art 43(5).

Held, allowing the application:

As there was no prescribed format of requiring any particular person to sign the letter of revocation, the PM himself could sign the letter to convey the decision to the plaintiff. There was nothing in the PM's letter to show that the letter was written at the behest of the King. Nevertheless, as the King was advised and informed about the decision as evidenced by the affidavit of the private secretary, such omission is of no consequence. The affidavit evidence lend support to the averment in the PM's letter that he had informed the King about the revocation. Looking at the facts objectively, the letter of revocation had satisfied the requirement of art 43(5) of the Federal Constitution. It was also obvious that the plaintiff's case disclosed no reasonable cause of action and was obviously unsustainable (see p 197E–I).

[Bahasa Malaysia summary

Plaintif adalah, pada masa yang berkenaan, Timbalan Perdana Menteri ('Timbalan PM') dan juga Menteri Kewangan tetapi telah diserahkan dengan sepucuk surat daripada Perdana Menteri ('PM') memberitahu bahawa perlantikannya sebagai Timbalan PM dan Menteri Kewangan telah dibatalkan, berkuatkuasa serta merta. Plaintif telah membawa satu tindakan terhadap defendan-defendan atas dasar bahawa pembatalan perlatikannya sebagai Timbalan PM dan Menteri Kewangan telah tidak dilakukan menurut keperluan-keperluan perkara 43(5) Perlembagaan Persekutuan. Defendan-defendan kemudiannya telah memohon, antara lain, saman pemula dan afidavit sokongan plaintif dibatalkan atas dasar ia tidak mendedahkan apa-apa kausa tindakan yang munasabah, ia adalah remeh dan menyusahkan dan ia adalah satu penyalahgunaan proses mahkamah.

Peguam bagi pihak plaintif telah menghujahkan bahawa surat pembatalan yang telah dihantar kepada plaintif kelihatan seperti PM yang telah memecat plaintiff, sedangkan PM bukanlah alter ego kepada Yang Dipertuan Agong. Walau bagaimanapun, peguam bagi pihak defendan-defendan telah menegaskan bahawa dengan penyampaian keputusan PM kepada Yang Dipertuan Agong bersama dengan surat pembatalan yang telah dihantar kepada plaintif, pembatalan tersebut telah sempurna, dan prosedur yang digunakan telah memenuhi keperluan-keperluan perkara 43(5).

Diputuskan, membenarkan permohonan:

Memandangkan tidak terdapat format tertentu yang memerlukan seseorang yang tertentu untuk menandatangani surat pembatalan itu, PM sendiri boleh menandatangani surat itu untuk menyampaikan keputusan tersebut kepada plaintif. Tidak terdapat apa-apa di dalam surat PM itu yang menunjukkan bahawa surat itu telah ditulis atas perintah Yang Dipertuan Agong. Meskipun begitu, memandangkan Yang Dipertuan Agong telah dinasihatkan dan diberitahu tentang keputusan itu seperti yang ditunjukkan oleh afidavit setiausaha peribadi, peninggalan sedemikian tidak memberi apa-apa kesan. Keterangan afidavit itu telah meminjamkan sokongan kepada penegasan di dalam surat PM bahawa dia telah memberitahu Yang Dipertuan Agong tentang pembatalan tersebut. Melihat kepada fakta-fakta secara objektif, surat pembatalan tersebut telah memenuhi keperluan perkara 43(5) Perlembagaan Persekutuan. Adalah jelas bahawa kes plaintif tidak mendedahkan sebarang kausa tindakan yang munasabah dan jelas sekali tidak dapat diterima (lihat ms 197E–I).]

Notes

For a case on the Federal Constitution, see 3 *Mallal's Digest* (4th Ed, 1997 Reissue) para 1141.

Cases referred to

Attorney-General of the Duchy of Lancaster v London & North Western Railway Co [1892] 3 Ch 274 (refd)
Government of Malaysia v Mahan Singh [1975] 2 MLJ 160 (refd)
Merdeka University Bhd v Government of Malaysia [1982] 2 MLJ 243 (refd)
Samsher Singh v State of Punjab 1974 2192 AIR SC 2228 (refd)

Legislation referred to

Federal Constitution arts 40(1A), 43(5)
Federal Constitution art 74 [Ind]
Rules of the High Court 1980 O 18 r 19(1)(a), (b), (d)

Karpal Singh (*Jagdeep Singh Deo* and *Gobind Singh Deo* with him) (*Karpal Singh & Co*) for the plaintiff.

Zaitun Zawiyah Puteh (*Bakar bin Jais* with her) (Senior Federal Counsel) for the defendants.

Mohd Saari J: By way of summons in chambers (encl 11), the defendants/applicants apply for the following:

(1) bahawa saman pemula dan afidavit sokongan plaintif terhadap defendan-defendan dibuang di bawah A 18 k 19(1)(a), (b) dan (d) Kaedah-Kaedah Mahkamah Tinggi 1980 dan/atau di bawah bidang kuasa sedia ada mahkamah atas sebab:

(a) ia tidak mendedahkan apa-apa kuasa tindakan yang munasabah; dan/atau

(b) ia adalah mengaibkan, remeh atau menyusahkan; dan/atau

(c) ia selainnya adalah suatu penyalahan proses mahkamah;

(2) (not applicable);

(3) (not applicable);

(4) bahawa tindakan plaintif terhadap defendan-defendan dibatalkan; dan

(5) bahawa defendan-defendan mendapat kos permohonan ini.

Background

At all material times, the plaintiff was Deputy Prime Minister ('Deputy PM') and also Minister of Finance. On 2 September 1998, the plaintiff was served with a letter from the Prime Minister ('PM') saying that his appointment as Deputy PM and Minister of Finance was revoked with immediate effect (2 September 1998 at 5.30 pm).

Observation

Language of art 43(5) of the Federal Constitution is clear. A Minister holds office during pleasure of Yang Dipertuan Agong, meaning a Minister may be dismissed at any time on advice of the PM. What is the rationale for the

right to dismiss at pleasure? In *Government of Malaysia v Mahan Singh* [1975] 2 MLJ 155 at p 160, Suffian LP (as he then was) said: A

> ... as stated by Sproule J in *Pillai*'s case (6 FMSLR 160 at p 170) government employment being for the good of the public, it must not continue when it is no longer for the public good; it is essential for the public good that the Crown should not be hampered in dismissing a servant whose continuance in office it deems detrimental to the best interests of the state and its good government, ... B

Further, it is my observation, in the absence of expressed provision to the contrary, decision to revoke the appointment of a Minister under art 43(5) is not justiciable. C

The above is not in issue.

The issue for determination is whether revocation of appointment of plaintiff as Deputy PM and Minister of Finance was done in accordance with the requirement of art 43(5) of the Federal Constitution.

Dato' Zaitun submitted that by virtue of arts 43(5) and 40(1A), the King must act on advice (see *Merdeka University Bhd v Government of Malaysia* [1982] 2 MLJ 243). D

On construction to be given to art 74 of the Indian Constitution (similar to art 40 of the Federal Constitution), my attention was drawn to the case of *Samsher Singh v State of Punjab* (1974) 2192 AIR SC at p 2228, para 148 where it states, inter alia: E

> We are of the view that President means for all practical purposes, the Minister or the Council of Ministers as the case may be, and his opinion, satisfaction or decision is constitutionally secured when his Ministers arrive at such opinion, satisfaction or decision.

To recapitulate on the principle enunciated above, the King must act on advice. A fortiori, based on clear wording of art 40(1A), it is imperative that the King only acts on the advice of the PM. F

Further, it is submitted that with the conveying of the PM's decision (keputusan) to the King coupled with the letter of revocation sent to the plaintiff, the act of revocation was complete. Hence, the procedure adopted met the requirement of art 43(5). G

Encik Karpal concedes that art 40(1A) applies to the plaintiff's case, meaning the King must act on advice of the PM.

However, he argues that what is in dispute is the PM's letter sent to the plaintiff. From the tone of the letter, it appears as if the PM was dismissing the plaintiff, whereas the PM was not the alter ego of the King. H

Finding

Common prudence dictates that as the King could only act on advice, the PM must first formulate a decision (keputusan) to dismiss the plaintiff. Next step is for the PM to inform the King about his decision (keputusan). Thereafter, the decision is to be conveyed to the plaintiff. The question is, who is responsible in informing the plaintiff about the revocation. I

Normally, the King would not personally inform a Minister about the revocation of a Minister's appointment but would instruct his servant or agent to do so. Such a person includes the King's private secretary.

For ease of reference, I append the PM's letter below:

Perdana Menteri
Malaysia

Yang Berhormat Dato' Seri Anwar bin Ibrahim

Yang Berhormat Dato',

Dengan dukacitanya saya terpaksa melucutkan jawatan-jawatan Timbalan Perdana Menteri dan Menteri Kewangan daripada Dato' Seri serta lain-lain jawatan dalam kerajaan yang dipegang oleh Dato' Seri sebagai Timbalan Perdana Menteri dan Menteri Kewangan.

Pelucutan ini berkuatkuasa dari hari ini, 2 September 1998 mulai jam 5.30 petang.

Perlucutan ini telah dimaklumkan kepada Seri Paduka Baginda Yang Di-Pertuan Agong.

Salam hormat,

tt
Dr Mahathir bin Mohamad
2 September 1998

Here, the PM informed the plaintiff about the revocation. As there is no prescribed format, for instance, requiring any particular person to sign the letter of revocation, I do not see why the PM himself could not sign the letter to convey the decision (keputusan) to the plaintiff.

It is true that there is nothing in the PM's letter to show that the letter was written at the behest of the King. Nevertheless, as the King was advised and informed about the decision (keputusan), as evidenced by paras 4 and 5 of the affidavit (encl 10) of the private secretary, such omission, in my view, is of no consequence. A fortiori, the aforesaid affidavit evidences lend support to the averment in the PM's letter in that he (the PM) had informed the King about the revocation. Looking at the undisputed facts objectively, in substance although not in form, in my judgment, the letter of revocation, has satisfied the requirement of art 43(5).

Where facts and law are not clear which would require further investigation, it would be highly improper for the court to entertain an application under O 18 r 19 of the Rules of the High Court 1980. However, as here, the hearing proceeded on undisputed facts and the parties had argued extensively on substantive issue, ie whether there is compliance with art 43(5). The plaintiff's case revolves around the PM's letter sent to the plaintiff. I have made a finding as to its legal effect, hence there is no necessity for parties to argue further on substantive issue. On the facts and law as adumbrated above, it is glaring to me that plaintiff's case discloses no reasonable cause of action and is obviously unsustainable (*Attorney-General of the Duchy of Lancaster v London & North Western Railway Co* [1892] 3 Ch 274).

In the premise and for the above reasons, I enter judgment for the defendants and order in terms of prayer 1, 4 and 5 of encl 11.

Application allowed.

Reported by Mohd Rizal Abidin